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# A BILL FOR AN ACT

RELATING TO WATER.

**BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:**

1           SECTION 1. The legislature finds that effective and  
2 efficient water resource management requires continuous and  
3 experienced leadership, especially given the climate crisis and  
4 the urgent necessity to properly steward water resources to meet  
5 the affordable housing needs of local residents.

6           On December 28, 1994, the review commission on the state  
7 water code submitted its final report to the legislature  
8 pursuant to Act 45, Session Laws of Hawaii 1987. The review  
9 commission determined that amendments to the state water code  
10 were necessary to enable the commission on water resource  
11 management to more effectively carry out its mandate pursuant to  
12 article XI, section 7, of the Hawaii State Constitution to "set  
13 overall water conservation, quality and use policies; define  
14 beneficial and reasonable uses; protect ground and surface water  
15 resources, watersheds and natural stream environments; establish  
16 criteria for water use priorities while assuring appurtenant  
17 rights and existing correlative and riparian uses and establish



1 procedures for regulating all uses of Hawaii's water resources."  
2 Therefore, further clarification of the commission on water  
3 resource management's purpose, including its leadership  
4 structure and composition of the commission's board, will  
5 provide greater accountability and protection of the State's  
6 waters.

7 The purpose of this Act is to:

- 8 (1) Define the public trust responsibilities of the  
9 commission on water resource management and require  
10 the commission, in acting upon water use permit  
11 applications, to prioritize applications for public  
12 trust purposes;
- 13 (2) Allow the commission to retain independent legal  
14 counsel;
- 15 (3) Amend the scope of the commission on water resource  
16 management to include declarations of emergencies;
- 17 (4) Repeal the position of deputy to the chairperson of  
18 the commission on water resource management and  
19 establish the position of executive director of the  
20 commission on water resource management;



- 1 (5) Amend the composition of the commission on water
- 2 resource management;
- 3 (6) Authorize entities to challenge an emergency order of
- 4 the commission on water resource management under
- 5 certain conditions; and
- 6 (7) Establish fines for certain water use offenses.

7 SECTION 2. Chapter 174C, Hawaii Revised Statutes, is  
8 amended by adding a new section to part IV to be appropriately  
9 designated and to read as follows:

10 "§174C- Public trust purpose. The commission shall act  
11 upon water use permit applications, filed in accordance with  
12 sections 174C-51, 174C-52, and 174C-53, for both existing and  
13 new public trust purposes before acting upon water use permit  
14 applications for other existing or new uses, or both, filed in  
15 accordance with sections 174C-51, 174C-52, and 174C-53.  
16 Proceedings for applications for public trust purposes shall be  
17 held first and separate from proceedings for all other  
18 applications filed in accordance with sections 174C-51, 174C-52,  
19 and 174C-53."

20 SECTION 3. Section 28-8.3, Hawaii Revised Statutes, is  
21 amended as follows:



1           1. By amending subsection (a) to read:

2           "(a) No department of the State other than the attorney  
3 general may employ or retain any attorney, by contract or  
4 otherwise, for the purpose of representing the State or the  
5 department in any litigation, rendering legal counsel to the  
6 department, or drafting legal documents for the department;  
7 provided that the foregoing provision shall not apply to the  
8 employment or retention of attorneys:

9           (1) By the public utilities commission, the labor and  
10 industrial relations appeals board, and the Hawaii  
11 labor relations board;

12           (2) By any court or judicial or legislative office of the  
13 State; provided that if the attorney general is  
14 requested to provide representation to a court or  
15 judicial office by the chief justice or the chief  
16 justice's designee, or to a legislative office by the  
17 speaker of the house of representatives and the  
18 president of the senate jointly, and the attorney  
19 general declines to provide such representation on the  
20 grounds of conflict of interest, the attorney general  
21 shall retain an attorney for the court, judicial, or



- 1 legislative office, subject to approval by the court,  
2 judicial, or legislative office;
- 3 (3) By the legislative reference bureau;
- 4 (4) By any compilation commission that may be constituted  
5 from time to time;
- 6 (5) By the real estate commission for any action involving  
7 the real estate recovery fund;
- 8 (6) By the contractors license board for any action  
9 involving the contractors recovery fund;
- 10 (7) By the office of Hawaiian affairs;
- 11 (8) By the department of commerce and consumer affairs for  
12 the enforcement of violations of chapters 480 and  
13 485A;
- 14 (9) As grand jury counsel;
- 15 (10) By the Hawaii health systems corporation, or its  
16 regional system boards, or any of their facilities;
- 17 (11) By the auditor;
- 18 (12) By the office of ombudsman;
- 19 (13) By the insurance division;
- 20 (14) By the University of Hawaii;
- 21 (15) By the Kahoolawe island reserve commission;



- 1 (16) By the division of consumer advocacy;
- 2 (17) By the office of elections;
- 3 (18) By the campaign spending commission;
- 4 (19) By the Hawaii tourism authority, as provided in
- 5 section 201B-2.5;
- 6 (20) By the division of financial institutions;
- 7 (21) By the office of information practices;
- 8 (22) By the school facilities authority;
- 9 (23) By the Mauna Kea stewardship and oversight authority;
- 10 [~~or~~]
- 11 (24) By the commission on water resource management; or
- 12 [~~(24)~~] (25) By a department, if the attorney general, for
- 13 reasons deemed by the attorney general to be good and
- 14 sufficient, declines to employ or retain an attorney
- 15 for a department; provided that the governor waives
- 16 the provision of this section."
- 17 2. By amending subsection (c) to read:
- 18 "(c) Every attorney employed by any department on a
- 19 full-time basis, except an attorney employed by the public
- 20 utilities commission, the labor and industrial relations appeals
- 21 board, the Hawaii labor relations board, the office of Hawaiian



1 affairs, the Hawaii health systems corporation or its regional  
2 system boards, the department of commerce and consumer affairs  
3 in prosecution of consumer complaints, insurance division, the  
4 division of consumer advocacy, the University of Hawaii, the  
5 Hawaii tourism authority as provided in section 201B-2.5, the  
6 Mauna Kea stewardship and oversight authority, the commission on  
7 water resource management, the office of information practices,  
8 or as grand jury counsel, shall be a deputy attorney general."

9 SECTION 4. Section 84-18, Hawaii Revised Statutes, is  
10 amended by amending subsection (e) to read as follows:

11 "(e) Subject to the restrictions imposed in subsections  
12 (a) through (d), the following individuals shall not represent  
13 any person or business for a fee or other consideration  
14 regarding any legislative action or administrative action, as  
15 defined in section 97-1, for twelve months after termination  
16 from their respective positions:

- 17 (1) The governor;  
18 (2) The lieutenant governor;  
19 (3) The administrative director of the State;  
20 (4) The attorney general;  
21 (5) The comptroller;



- 1 (6) The chairperson of the board of agriculture;
- 2 (7) The director of corrections and rehabilitation;
- 3 (8) The director of finance;
- 4 (9) The director of business, economic development, and
- 5 tourism;
- 6 (10) The director of commerce and consumer affairs;
- 7 (11) The adjutant general;
- 8 (12) The superintendent of education;
- 9 (13) The chairperson of the Hawaiian homes commission;
- 10 (14) The director of health;
- 11 (15) The director of human resources development;
- 12 (16) The director of human services;
- 13 (17) The director of labor and industrial relations;
- 14 (18) The chairperson of the board of land and natural
- 15 resources;
- 16 (19) The director of law enforcement;
- 17 (20) The director of taxation;
- 18 (21) The director of transportation;
- 19 (22) The president of the University of Hawaii;
- 20 (23) The executive administrator of the board of regents of
- 21 the University of Hawaii;



- 1       (24) The administrator of the office of Hawaiian affairs;
- 2       (25) The chief information officer;
- 3       (26) The executive director of the agribusiness development
- 4             corporation;
- 5       (27) The executive director of the campaign spending
- 6             commission;
- 7       (28) The executive director of the Hawaii community
- 8             development authority;
- 9       (29) The executive director of the Hawaii housing finance
- 10            and development corporation;
- 11       (30) The president and chief executive officer of the
- 12            Hawaii tourism authority;
- 13       (31) The executive officer of the public utilities
- 14            commission;
- 15       (32) The state auditor;
- 16       (33) The director of the legislative reference bureau;
- 17       (34) The ombudsman;
- 18       (35) The permanent employees of the legislature, other than
- 19            persons employed in clerical, secretarial, or similar
- 20            positions;
- 21       (36) The administrative director of the courts;



1 (37) The executive director of the state ethics commission;

2 (38) The executive officer of the state land use  
3 commission;

4 (39) The executive director of the natural energy  
5 laboratory of Hawaii authority;

6 (40) The executive director of the Hawaii public housing  
7 authority; and

8 (41) The [~~first deputy to the chairperson~~] executive  
9 director of the commission on water resource  
10 management;

11 provided that this subsection shall not apply to any person who  
12 has held one of the positions listed above only on an interim or  
13 acting basis and for a period of less than one hundred  
14 eighty-one days."

15 SECTION 5. Section 174C-5, Hawaii Revised Statutes, is  
16 amended to read as follows:

17 "§174C-5 General powers and duties. The general  
18 administration of the state water code shall rest with the  
19 commission on water resource management. In addition to its  
20 other powers and duties, the commission:



- 1           (1) Shall carry out topographic surveys, research, and  
2                    investigations into all aspects of water use and water  
3                    quality;
- 4           (2) Shall designate water management areas for regulation  
5                    under this chapter where the commission, after the  
6                    research and investigations mentioned in paragraph  
7                    (1), shall consult with the appropriate county council  
8                    and county water agency, and after public hearing and  
9                    published notice, finds that the water resources of  
10                  the areas are being threatened by existing or proposed  
11                  withdrawals of water;
- 12          (3) Shall establish an instream use protection program  
13                  designed to protect, enhance, and reestablish, where  
14                  practicable, beneficial instream uses of water in the  
15                  State;
- 16          (4) May contract and cooperate with the various agencies  
17                  of the federal government and with state and local  
18                  administrative and governmental agencies or private  
19                  persons;
- 20          (5) May enter, after obtaining the consent of the property  
21                  owner, at all reasonable times upon any property other



1 than dwelling places for the purposes of conducting  
2 investigations and studies or enforcing any of the  
3 provisions of this code, being liable, however, for  
4 actual damage done. If consent cannot be obtained,  
5 reasonable notice shall be given prior to entry;

6 (6) Shall cooperate with federal agencies, other state  
7 agencies, county or other local governmental  
8 organizations, and all other public and private  
9 agencies created for the purpose of utilizing and  
10 conserving the waters of the State, and assist these  
11 organizations and agencies in coordinating the use of  
12 their facilities and participate in the exchange of  
13 ideas, knowledge, and data with these organizations  
14 and agencies. For this purpose the commission shall  
15 maintain an advisory staff of experts;

16 (7) Shall prepare, publish, and issue printed pamphlets  
17 and bulletins as the commission deems necessary for  
18 the dissemination of information to the public  
19 concerning its activities;

20 (8) May appoint and remove agents, including hearings  
21 officers and consultants, necessary to carry out the



1 purposes of this chapter, who may be engaged by the  
2 commission without regard to the requirements of  
3 chapter 76 and section 78-1;

4 (9) May hire employees in accordance with chapter 76;

5 (10) May appoint and dismiss attorneys as may be necessary,  
6 who shall be exempt from chapter 76;

7 [~~10~~] (11) May acquire, lease, and dispose of real and  
8 personal property as may be necessary in the  
9 performance of its functions, including the  
10 acquisition of real property for the purpose of  
11 conserving and protecting water and water related  
12 resources as provided in section 174C-14;

13 [~~11~~] (12) Shall identify, by continuing study, those areas  
14 of the State where salt water intrusion is a threat to  
15 fresh water resources and report its findings to the  
16 appropriate county mayor and council and the public;

17 [~~12~~] (13) Shall provide coordination, cooperation, or  
18 approval necessary to the effectuation of any plan or  
19 project of the federal government in connection with  
20 or concerning the waters of the State. The commission  
21 shall approve or disapprove any federal plans or



1 projects on behalf of the State. No other agency or  
2 department of the State shall assume the duties  
3 delegated to the commission under this paragraph;  
4 except that the department of health shall continue to  
5 exercise the powers vested in it with respect to water  
6 quality, and except that the department of business,  
7 economic development, and tourism shall continue to  
8 carry out its duties and responsibilities under  
9 chapter 205A;

10 ~~[(13)]~~ (14) Shall plan and coordinate programs for the  
11 development, conservation, protection, control, and  
12 regulation of water resources, based upon the best  
13 available information, and in cooperation with federal  
14 agencies, other state agencies, county or other local  
15 governmental organizations, and other public and  
16 private agencies created for the utilization and  
17 conservation of water;

18 ~~[(14)]~~ (15) Shall catalog and maintain an inventory of all  
19 water uses and water resources; ~~[and~~

20 ~~(15)]~~ (16) Shall determine appurtenant water rights,  
21 including but not limited to the quantification of the



1 amount of water and the specification of the water  
2 course or the means of access and delivery entitled to  
3 by that right, which determination shall be valid for  
4 purposes of this chapter[-]; and

5 (17) May declare an emergency if the commission determines,  
6 in consultation with the governor, the appropriate  
7 county, and the department of health, that there is an  
8 absence of sufficient quantity and quality of water in  
9 any area, whether within or outside of a water  
10 management area, that immediately threatens the public  
11 health, safety, and welfare. The commission may issue  
12 orders reciting the existence of the emergency and  
13 requiring those actions as the commission deems  
14 necessary to address the emergency be taken, including  
15 but not limited to apportioning, rotating, limiting,  
16 or prohibiting the use of the water resources of the  
17 area; provided that an emergency order shall expire no  
18 later than one year after issuance by the commission;  
19 provided further that the order may be extended by a  
20 separate or supplementary order."



1 SECTION 6. Section 174C-6, Hawaii Revised Statutes, is  
2 amended to read as follows:

3 "§174C-6 [~~Deputy to the chairperson~~] Executive director of  
4 the commission on water resource management. (a) There shall  
5 be [~~a first deputy to the chairperson~~] an executive director of  
6 the commission on water resource management [~~("deputy for water  
7 resource management") who shall be in addition to any other  
8 first deputy to the chairperson as the chairperson of the board  
9 of land and natural resources. The deputy]~~, who shall have  
10 experience in the area of water resources and shall be appointed  
11 by [~~the chairperson with the approval of a majority of]~~, and  
12 serve at the pleasure of, the commission.

13 (b) The duties of the [~~deputy for water resource  
14 management~~] executive director shall be to administer and  
15 implement, under the direction of the commission, the state  
16 water code [~~and all~~], the rules, and other directives  
17 [~~promulgated in accordance therewith~~] adopted by the commission.  
18 Nothing in this [~~provision~~] section shall be construed as  
19 limiting the authority of the commission as to matters regarding  
20 water resources.



1 (c) The position of [~~deputy for water resource management~~  
2 ~~is not~~] executive director shall not be subject to chapter 76.

3 (d) The salary of the [~~deputy for water resource~~  
4 ~~management~~] executive director shall be [as provided in section  
5 26-53 for first deputies or first assistants to the head of any  
6 department.] set by the board, and the executive director shall  
7 be included in any benefit program generally applicable to the  
8 officers and employees of the State.

9 (e) The commission shall develop and document annual goals  
10 and performance measures for the executive director that allow  
11 the commission to annually evaluate the executive director's  
12 work to ensure compliance by the commission with statutory and  
13 constitutional requirements and achievement of its statutory and  
14 constitutional purposes.

15 (f) The commission shall evaluate and document the  
16 evaluation of the executive director's performance annually, or  
17 more frequently upon the request of at least four members of the  
18 commission, based on annual goals, performance measures, and  
19 other relevant criteria."

20 SECTION 7. Section 174C-7, Hawaii Revised Statutes, is  
21 amended to read as follows:



1           "§174C-7 Commission on water resource management. (a)  
2 There is established within the department a commission on water  
3 resource management consisting of seven members which shall have  
4 exclusive jurisdiction and final authority in all matters  
5 relating to implementation and administration of the state water  
6 code, except as otherwise specifically provided in this chapter.  
7 The commission shall be attached to the department of land and  
8 natural resources for administrative purposes only.

9           (b) Five members shall be appointed by the governor  
10 subject to confirmation by the senate in the manner prescribed  
11 in subsection [~~(d)~~] (e). Each member shall have substantial  
12 experience in the area of water resource management; provided  
13 that at least one member shall have substantial experience or  
14 expertise in traditional Hawaiian water resource management  
15 techniques and in traditional Hawaiian riparian usage such as  
16 those preserved by section 174C-101. Each of the members shall  
17 be eligible to serve as the chairperson of the commission upon  
18 election by a majority of the commission members.

19           (c) The chairperson of the board of land and natural  
20 resources [~~shall be the chairperson of the commission. The~~] and  
21 the director of health or the director's designee shall serve as



1 ~~[an]~~ ex officio~~[+]~~, ~~[+]~~ voting ~~[member-]~~ members, but shall be  
2 ineligible to serve as chairperson of the commission.

3 ~~[-e+]~~ (d) The members of the commission shall serve  
4 without compensation but shall be reimbursed for expenses,  
5 including travel expenses, necessary for the performance of  
6 their duties.

7 ~~[-d+]~~ (e) In appointing a member to the commission, the  
8 governor shall select from a list submitted by a nominating  
9 committee. The nominating committee shall be composed of ~~[four]~~  
10 five individuals chosen as follows: two persons appointed by  
11 the governor; one person appointed by the president of the  
12 senate; ~~[and]~~ one person appointed by the speaker of the  
13 house~~[-]~~; and one person appointed by the chief executive  
14 officer of the office of Hawaiian affairs. The committee shall  
15 solicit applications and send to the governor the names of at  
16 least three individuals for each open position.

17 ~~[-e+]~~ (f) Except as otherwise provided in this chapter,  
18 the commission shall be subject to sections 26-34, 26-35, and  
19 26-36."

20 SECTION 8. Section 174C-9, Hawaii Revised Statutes, is  
21 amended to read as follows:



1 "[~~H~~]§174C-9[~~H~~] Proceedings before the commission  
2 concerning water resources. (a) All proceedings before the  
3 commission concerning the enforcement or application of any  
4 provision of this chapter or any rule adopted pursuant thereto,  
5 or the issuance, modification, or revocation of any permit or  
6 license under this code by the commission, shall be conducted in  
7 accordance with chapter 91. Hearings regarding particular water  
8 resources shall be conducted on the island where those water  
9 resources are located.

10 (b) Any party to whom an emergency order is directed may  
11 challenge that order but shall immediately comply with the order  
12 pending disposition of the party's challenge. The commission  
13 shall give precedence to a hearing on the challenge over all  
14 other pending matters."

15 SECTION 9. Section 174C-15, Hawaii Revised Statutes, is  
16 amended to read as follows:

17 "§174C-15 Penalties and common law remedies. (a) The  
18 commission may enforce its rules and orders adopted pursuant to  
19 this chapter by suit for injunction or for damages or both.

20 (b) Any person who [~~violates any~~]:

21 (1) Violates any provision of this chapter[~~, or any~~];



1        (2) Violates any rule adopted pursuant to this chapter [7  
2                    may];

3        (3) Violates any order of the commission;

4        (4) Fails to obtain a permit when a permit is required  
5                    pursuant to this chapter;

6        (5) Fails to comply with permit conditions; or

7        (6) Fails to comply with standardized water audit  
8                    requirements pursuant to Act 169, Session Laws of  
9                    Hawaii 2016,

10       shall be subject to a fine imposed by the commission. [Such]

11       The fine shall be not less than \$50 and shall not exceed

12       [\$5,000. For a continuing offense, each day during which the

13       offense is committed is a separate violation.] \$60,000 per

14       violation. Each day that a violation exists or continues to

15       exist shall constitute a separate offense. Penalties for

16       continuing violations shall be assessed from the earliest known

17       date of the violation. The earliest known date of a violation

18       shall be determined by the commission by a preponderance of the

19       evidence; provided that if the earliest known date cannot be

20       determined by a preponderance of evidence, penalties for



1 continuing violations shall be assessed from the earliest date  
2 the commission is made aware of the violation.

3 (c) When imposing a penalty, the commission shall consider  
4 the following factors, which shall include but not be limited  
5 to:

6 (1) The nature, circumstances, extent, gravity, and  
7 history of the violation and of any prior violations;

8 (2) The economic benefit to the violator, or anticipated  
9 by the violator, resulting from the violation;

10 (3) The opportunity, difficulty, and history of corrective  
11 action;

12 (4) Good faith efforts to comply;

13 (5) Degree of culpability; and

14 (6) Other matters as justice may require.

15 ~~[-(e)]~~ (d) No provision of this chapter shall bar the right  
16 of any injured person to seek other legal or equitable relief  
17 against a violator of this chapter.

18 ~~[-(d)]~~ (e) Except as otherwise provided by law, the  
19 commission or its authorized representative by proper delegation  
20 ~~[may]~~ shall set, charge, and collect administrative fines ~~[or]~~;  
21 may bring legal action to recover administrative fees and costs



1 as documented by receipts or affidavit, including [~~attorneys~~]  
2 attorney's fees and costs; [~~or~~]; and may bring legal action to  
3 recover administrative fines, fees, and costs, including  
4 [~~attorneys~~] attorney's fees and costs, or payment for damages  
5 resulting from a violation of this chapter or any rule adopted  
6 pursuant to this chapter."

7 SECTION 10. Section 174C-62, Hawaii Revised Statutes, is  
8 amended as follows:

9 1. By amending subsections (a) through (c) to read:

10 "(a) The commission shall formulate a statewide plan for  
11 implementation during periods of water shortage. As a part of  
12 the plan, the commission shall adopt a reasonable system of  
13 permit classification according to source of water supply,  
14 method of extraction or diversion, use of water, or a  
15 combination thereof.

16 (b) The commission, by rule, may declare that a water  
17 shortage exists within all or part of an area, whether within or  
18 outside of a water management area, when insufficient water is  
19 available to meet the requirements of the permit system or when  
20 conditions [~~are such as to~~] require a temporary reduction in  
21 total water use within the area to protect water resources from



1 serious harm. The commission shall publish a set of criteria  
2 for determining when a water shortage exists[-], including but  
3 not limited to impacts and effects of the climate crisis.

4 (c) In accordance with the plan adopted under subsection  
5 (a), the commission may impose [~~sueh~~] restrictions on one or  
6 more classes of permits and outside of management areas on well  
7 and stream diversion owners and operators as may be necessary to  
8 protect the water resources of the area from serious harm and to  
9 restore them to their previous water quantity or chloride level  
10 condition."

11 2. By amending subsections (e) and (f) to read:

12 "(e) When a water shortage is declared, the commission  
13 shall cause a notice [~~thereof~~] of the water shortage to be  
14 published in a prominent place in a newspaper of general  
15 circulation throughout the area[-] and on the commission's  
16 website. The notice shall be published each day for the first  
17 week of the shortage and once a week [~~thereafter~~] for four  
18 months, followed by monthly publications until the declaration  
19 is rescinded. Publication of [~~sueh~~] the notice shall serve as  
20 notice to all water users in the area of the condition of water  
21 shortage.



1 (f) The commission shall cause each permittee in the area  
2 to be notified by regular and electronic mail of any change in  
3 the conditions of the permittee's permit, any suspension  
4 [~~thereof,~~] of the permittee's permit, or of any other  
5 restriction on the use of water for the duration of the water  
6 shortage."

7 SECTION 11. This Act does not affect rights and duties  
8 that matured, penalties that were incurred, and proceedings that  
9 were begun before its effective date.

10 SECTION 12. If any provision of this Act, or the  
11 application thereof to any person or circumstance, is held  
12 invalid, the invalidity does not affect other provisions or  
13 applications of the Act that can be given effect without the  
14 invalid provision or application, and to this end the provisions  
15 of this Act are severable.

16 SECTION 13. Statutory material to be repealed is bracketed  
17 and stricken. New statutory material is underscored.

18 SECTION 14. This Act shall take effect on July 1, 2025.

19

INTRODUCED BY: *Nedie K. Parker*  
By Request  
JAN 16 2025



# H.B. NO. 405

**Report Title:**

Maui County Council Package; Water; CWRM; Emergency Orders;  
Water Shortages; Fines

**Description:**

Defines the public trust responsibilities of the Commission on Water Resource Management. Allows the Commission to retain independent legal counsel. Amends the scope of the Commission to include declaration of emergencies. Repeals the position of Deputy to the Chairperson of the Commission on Water Resource Management and establishes the position of Executive Director. Amends the composition of the Commission. Authorizes entities to challenge an emergency order of the Commission under certain conditions. Establishes fines for certain water use offenses.

*The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.*

